

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-5, 7, 8, 10 and 12-15 are pending in the application, with claims 1, 4, 5, 12 and 13 being the independent claims. Claims 6, 9 and 11 are cancelled without prejudice to or disclaimer of the subject matter therein. New claims 13-15 are added. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicant respectfully requests that all outstanding objections and rejections be reconsidered and withdrawn.

Examiner Interview of August 23, 2004

Applicant would like to thank Examiner Estremsky for taking the time to discuss the pending claims in an Examiner Interview, held on August 23, 2004. The discussion aided Applicant in clarifying the double patenting issues, and developing the proper language and syntax to be used in amending claims 4 and 5.

Rejections Under 35 U.S.C. § 112

Claims 6 and 7 were rejected under 35 U.S.C § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 6 has been cancelled, and claim 7 has been amended, rendering the § 112 rejection moot.

Double Patenting Rejection

Claims 1-12 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,588,811 to Ferguson (hereinafter "the '811 patent"). The '811 patent was original filed

with claims 1-25. During prosecution of the '811 patent, however, a restriction requirement was issued stating that six patentably distinct species were being claimed and there were no generic claims. During a telephone conversation between David K.S. Cornwell and Examiner Melwani, on December 26, 2003, a provisional election was made to prosecute claims 1-11, 16 and 17 (Species 3). Claims 12-15 and 18-25 were withdrawn by examiner's amendment.

Claims 1-12 of the pending application, identical to the original claims 12-15 and 18-25 of the application that issued as the '811 patent respectively, were presented in a divisional application filed on July 2, 2003, prior to issuance of the '811 patent on July 8, 2003. As clearly stated in section 804.01 of the Manual of Patent Examining Procedure, the "third sentence of 35 U.S.C. 121 prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against a divisional application, if the divisional application is filed before the issuance of the patent." Claims 1-12 were filed in a divisional application, filed before issuance of the '811 patent, as a result of a restriction requirement during prosecution of the '811 patent. Further, none of the exceptional situations listed in (A)-(F) of MPEP section 804.01 apply to the present claims. Therefore, the '811 patent cannot be used as a reference against the currently pending application.

Applicant respectfully requests that the double patenting rejection be withdrawn. As such, claims 1-3 and 12 (rewritten in independent form) are in condition of allowance. Claims 4, 5, 7, 8 and 10 are patentable for the reasons stated below. Claims 13-15 have been added and should be in condition for allowance.

Rejections Under 35 U.S.C. § 102

Claims 5-9 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,790,197 to Parker. Parker describes a magnetic latch in which a user mechanically orients a pair of magnets into a position of repulsion in order to assist in opening a hinged member, such as a door. When the user moves the door towards a doorframe, however, the latch described in Parker is spring-loaded to revert to a position of attraction for closing. In the position of attraction, the magnets described in Parker act to further pull the door towards the doorframe.

Independent claim 5 has been amended to include: "switching means for selectively orienting [a] first magnet between a first position of repulsion [and] a second position of attraction between [the] first and [a] second magnet, wherein in the first position of repulsion the first magnet and the second magnet decelerate the door as the door is moved towards the doorframe." As such, Applicant's claim 5 recites a means plus function limitation that is to be examined in accordance with 35 U.S.C. § 112, paragraph six, and the rules applicable thereto. Applicant's claim 5 is patentable over Parker because Parker does not teach or suggest "switching means for selectively orienting" a first magnet into a position of repulsion with a second magnet, so as to decelerate a door as the door is moved towards a doorframe, as the claim term is interpreted in view of the specification.

Claims 7 and 8 depend from and add further features to independent claim 5 and are patentable over Parker for at least the same reasons as argued above with respect to the independent claim. Claims 6 and 9 have been cancelled, rendering the rejection of the claims moot.

Claims 4-8 and 10 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,647,165 to Whitla. Whitla describes a magnetic connecting assembly for an aircraft compartment. The assembly described in Whitla includes a first magnet mounted on a door and a second magnet mounted on a structure opposing the door, wherein the second magnet is an electromagnet. Independent claim 4 has been amended to include "a permanent magnet, wherein said magnet is rotatably mounted on a structure opposing the door." Whitla does not teach or suggest a permanent magnet rotatably mounted on a structure opposing the door to selectively orient the magnet between a first and second position. Instead, Whitla's electromagnet is attached by a stationary structure (see item #62 of Whitla) secured by two screws (see col. 3, lines 37-40 of Whitla). Whitla utilizes electricity to "switch" the polarity of its electromagnet and does not utilize a mounting structure to do so (see col. 3, lines 60-67 and col. 4, lines 1-7 of Whitla). For at least these reasons, claim 4 is patentable over Whitla.

Independent claim 5 has been amended to include: "switching means for selectively orienting [a] first magnet between a first position of repulsion [and] a second position of attraction between [the] first and [a] second magnet, wherein in the first position of repulsion the first magnet and the second magnet decelerate the door as the door is moved towards the doorframe." As discussed above, Applicant's claim 5 has been amended to recite a means plus function limitation that is to be examined in accordance with 35 U.S.C. § 112, paragraph six, and the rules applicable thereto. Applicant's claim 5 is patentable over Whitla because Whitla does not teach or suggest "switching means for selectively orienting" a first magnet into a position of repulsion with a second magnet, so as to decelerate a door as it is moved towards a doorframe, as the claim term is interpreted in view of the specification.

Claims 7, 8 and 10 depend from and add further features to independent claim 5 and are patentable over Whitla for at least the same reasons argued above with respect to the independent claim. Claim 6 has been cancelled, rendering the rejection of the claim moot.

Rejections Under 35 U.S.C. § 103

Claims 9 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,647,165 to Whitla. Claims 9 and 11 have been cancelled, rendering the rejection moot.

New Claims 13-16

Newly added independent claim 13 is patentable over Parker because Parker does not teach "switching means for allowing a user to selectively orient [a] second magnet" which is mounted on a doorframe. Claim 13 is patentable over Whitla because Whitla does not teach a system having two permanent magnets. Claims 14 and 15 depend from and add further features to independent claim 13 and are patentable over Parker and Whitla for at least the same reasons argued above with respect to the independent claim.

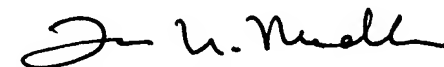
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Teresa U. Medler
Attorney for Applicant
Registration No. 44,933

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1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600